

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§
	§ No. 368, 2012
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
CORRECT CARE SOLUTIONS,	§ C.A. No. N12C-02-254
LLC, et al.,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: July 12, 2012

Decided: August 9, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 9th day of August 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, Frederick W. Smith, Jr., filed an appeal from the Superior Court's June 20, 2012 order dismissing his medical negligence complaint on the ground that he did not provide an affidavit of merit as required by Del. Code Ann. tit. 18, §6853(a) (1). The defendants-appellees, Correct Care Solutions, LLC, et al., have moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in February 2012, Smith, an inmate at the James T. Vaughn Correctional Center, filed a complaint in the Superior Court alleging medical negligence against Correct Care, the prison health care provider, and several of its employees. In lieu of an answer, Correct Care filed a motion to dismiss the complaint on the ground that Smith failed to provide an affidavit of merit as required by §6853(a) (1) and, moreover, was not excused from compliance with that requirement because his complaint failed to raise a rebuttable inference of medical negligence under §6853(b) and (e).

(3) Section 6853(a) (1) requires a plaintiff who files a complaint alleging medical negligence to provide an affidavit of merit signed by an expert as to each defendant named in the complaint. The statute provides the following exceptions to that requirement: a) where a foreign body was unintentionally left within the body of a patient following surgery; b) where an explosion or fire originating in a substance used in treatment occurred in

¹ Supr. Ct. R. 25(a).

the course of treatment; or c) where a surgical procedure was performed on the wrong patient or the wrong organ, limb or part of the patient's body.²

(4) In this appeal from the Superior Court's June 20, 2012 order, Smith claims that the Superior Court abused its discretion when it dismissed his complaint without a trial by jury. Smith also appears to claim that he is relieved of the statutory requirement for a certificate of merit because he signed an authorization form permitting review of his medical records with Correct Care.³

(5) It is undisputed that Smith did not file an affidavit of merit for each defendant named in his complaint, as required by the statute. Nor was Smith relieved of that requirement by providing a medical authorization form to Correct Care. Nor, finally, is there any evidence in the record that Smith is relieved of that requirement by falling within one of the statutory exceptions. Thus, we find no error or abuse of discretion on the part of the Superior Court in dismissing Smith's complaint.⁴

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

² Del. Code Ann. tit. 18, §6853(b) and (e).

³ Smith also questions why his complaint was permitted to be filed and service permitted to proceed in apparent violation of the procedures outlined in §6853(a) (1). We agree that those procedures do not appear to have been followed by the Prothonotary, but conclude that the deviation is without any legal effect in this case.

⁴ See also *Walls v. Cooper, et al.*, Del. Supr., No. 209, 1991, Horsey, J. (Nov. 8, 1991).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice